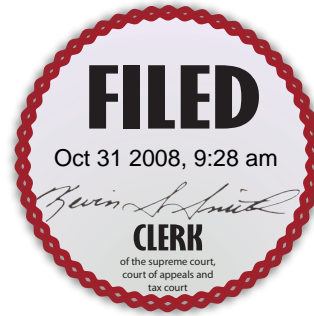


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ANGEL HERNANDEZ,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 03A01-0804-CR-201

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Chris D. Monroe, Judge
Cause No. 03D01-0704-FB-735

October 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Angel Hernandez appeals his fifteen-year sentence for Class B felony rape. We affirm.

Issue

Hernandez raises one issue on appeal: whether his fifteen-year executed sentence is appropriate in light of the nature of the offense and his character.

Facts

The State charged Hernandez with Class B felony rape, Class D felony criminal confinement, Class D felony sexual battery, and Class D felony domestic battery following his April 16, 2007 attack and rape of an ex-girlfriend. Hernandez went to J.D.'s apartment and forced her to have sexual intercourse. J.D. is also the mother of one of Hernandez's children. On March 10, 2008, Hernandez pled guilty to Class B felony rape. The State dismissed the remaining charges when Hernandez pled guilty. The State also dismissed an unrelated charge stemming from the alleged battery of another ex-girlfriend.

The trial court held a sentencing hearing on April 9, 2008. Hernandez admitted that he was in the country illegally and admitted his prior criminal history, which included convictions for misdemeanor battery, resisting law enforcement, and two for driving while intoxicated. A domestic battery case, for the beating of another girlfriend, was pending against Hernandez when he was arrested for the rape of J.D. The trial court sentenced Hernandez to fifteen years. This appeal followed.

Analysis

Hernandez contends his fifteen year executed sentence is inappropriate. Indiana Appellate Rule 7(B) provides that we may revise a sentence if we find that it is inappropriate in light of the nature of the offense and the character of the offender. Although Rule 7(B) does not require us to be “extremely” deferential to a trial court’s sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id.

Regarding the nature of his offense, Hernandez raped the mother of his child in her home and while their five-year old child was in the home asleep. Although he admitted to the crime and pled guilty, Hernandez has not convinced us that the nature of this offense merits a reduction to his sentence.

Regarding the character of the offender, nothing in Hernandez’s character merits reconsideration of his sentence. Hernandez is in the country illegally.¹ He contends that the fact that he sends money back to his family in Mexico and pays child support for one of his children here should garner positive weight. We disagree. We note that as the father of the child, Hernandez was obligated to pay child support. Any merit to his

¹ Hernandez implies on appeal that it was inappropriate for the trial court to consider and comment on his illegal status in this country during sentencing. Hernandez is incorrect in such an implication. See Sanchez v. State, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008) (finding a defendant’s illegal alien status to be a valid aggravator).

payment of child support is outweighed by the rape of the mother of the child. Such criminal action jeopardized not only the mother's wellbeing, but also subjected the child to the potential of witnessing the emotional and psychological trauma of her main caregiver.

Hernandez was deported once and illegally returned. While in the country illegally, he sustained convictions for driving with a suspended license, battery, resisting law enforcement, and operating while intoxicated. At the time he raped J.D., charges for the battery of another girlfriend were pending against Hernandez. Any positive indication of character from Hernandez's support of his family in Mexico is overwhelmingly outweighed by his total disregard of the laws in this country. Hernandez attempted to explain that his drinking problems cause his criminal behavior, but an alcohol abuse problem does not excuse raping and battering one's ex-girlfriends. Hernandez has not convinced us that his character merits an adjustment to his fifteen-year sentence.

Conclusion

Hernandez's fifteen-year executed sentence is appropriate. We affirm.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.